## IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS TEXARKANA DIVISION

DAVID DANIEL CRUZ	§	
v.	§	CIVIL ACTION NO. 5:12cv86
SHIRLEY ARCHIE, ET AL.	§	

## MEMORANDUM ADOPTING REPORT AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE AND ENTERING FINAL JUDGMENT

The Plaintiff David Cruz, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights in the Texas Department of Criminal Justice, Correctional Institutions Division. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Cruz complained of an incident in which he was given an incorrect medication, which resulted in his suffering an extended erection requiring surgery. The Defendants were ordered to answer the lawsuit and filed a motion for summary judgment, to which Cruz filed a response.

After review of the pleadings and the summary judgment evidence, the Magistrate Judge issued a Report on April 26, 2013, recommending that the Defendants' motion for summary judgment be granted and that the lawsuit be dismissed. On May 28, 2013, Cruz filed a motion which he styled as a "motion to stay proceedings." The Magistrate Judge construed this as a motion for extension of time in which to object to the Report and granted Cruz an extension until July 8. 2013, in which to file objections. Cruz received a copy of this order on June 5, 2013, but has not filed any objections or other response despite having ample time in which to do so; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and

legal conclusions accepted and adopted by the district court. <u>Douglass v. United Services</u> Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings and summary judgment evidence in this cause and the Report of the Magistrate Judge. Upon such review, the Court has determined that the Report of the

Magistrate Judge is correct. See United States v. Wilson, 864 F.2d 1219, 1221 (5th Cir.), cert.

denied, 492 U.S. 918, 109 S.Ct. 3243 (1989) (where no objections to a Magistrate Judge's Report

are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law."). It

is accordingly

ORDERED that the Report of the Magistrate Judge (docket no. 28) is hereby ADOPTED as

the opinion of the District Court. It is further

ORDERED that the Defendants' motion for summary judgment (docket no. 24) is

GRANTED and the above-styled civil action be and hereby is DISMISSED with prejudice. Finally,

it is

ORDERED that any and all motions which may be pending in this action are hereby

DENIED.

It is SO ORDERED.

SIGNED this 11th day of July, 2013.

MICHAEL H. SCHNEIDER

UNITED STATES DISTRICT JUDGE

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